Detailed Response to Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)

List of Exhibits

A.1	September 12, 2008 letter from Cahuilla Tribal Gaming Agency
A.2	September 18, 2008 letter from Dry Creek Rancheria
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A.6	September 4, 2008 letter from Rumsey Indian Rancheria
A.7	September 18, 2008 letter from Torres Martinez Gaming Commission
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B.	April 23, 2008 California Gambling Control Commission Response to Tribal Task Force Representative Final Report Statement of Need RE: CGCC-8, Dated February 13, 2008
C.	Excerpts from the NIGC Strategic Plan FY 2009-2014
D.	Written remarks of NIGC Chairman Montie R. Deer before the Senate Committee on Indian Affairs, March 14, 2002
E.	May 28, 2007 Copley News Service article by James P. Sweeney
F.	March 30, 2007 letter from Governor Arnold Schwarzenegger to Byron Dorgan, Chairman and Craig Thomas, Ranking Member, Senate Committee on Indian Affairs

Exhibit A.1

Cahuilla Tribal Gaming Agency

52702 Hwy 371, P.O. Box 390854 Anza, Ca. 92539
Phone: (951) 763-1200 ext. 138 Fax: (951) 763-4938

September 12, 2007

Evelyn Matteucci
State of California Gambling Control Commission
2399 Gateway Oaks Dr #100
Sacramento, CA 95833-4231

Re: Objection to the CCGC-8 Regulation

Dear Mrs. Mattecucci,

The Cahuilla Tribal Gaming Agency (CTGA) was present for the Tribal-State Association meeting held at Rolling Hills Casino, Corning, CA on September 4, 2008. During this meeting the California Gambling Control Commission (CGCC) submitted CGCC-8 Regulation to the Tribes of California for approval. This Regulation would impose a State Minimum Internal Control Standards (MICS) on the Tribes. The motion to approve such regulation was denied by the majority of the Tribal-State Association, the motion was carried as final action on this proposed Regulation.

The CTGA objects to the above-mentioned Regulation for the following reasons:

- According to the Indian Gaming Regulatory Act (IGRA) Indian Gaming is Regulated by three (3) sovereign's; Tribe, Federal, and State. As agreed upon in the Tribal/State Compact the Gaming Commission is the Primary Regulator, with the State of California fulfilling an active role in a limited over-site capacity.
- The CTGA has adopted Tribal Internal Controls, monitors, enforces industry standards to protect the assets, integrity, fairness, honesty, and Security of the Tribes Gaming Enterprise. Our controls are more stringent than the proposed Regulation by the State.
- Tribal State Compact Section 8.4.1 (e): The Tribe may object to a State Gaming Agency Regulation on the ground that it is *unnecessary, unduly burdensome*, or unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0.
- This Regulation duplicates the duty and responsibility of the Tribal Gaming Agency while creating an unnecessary financial Burdon on the tax payers of California.
- The State's justification for the proposed Regulation fails to clearly identify valid concerns and or lack of Regulation by the Tribe to warrant such proposal.

There is sufficient Tribal Gaming Regulatory Authority which was established by IGRA to adequately protect the Tribe. This Regulation is not needed, and imposes a variety of challenges with the State. The time, effort, and resources already allocated to this proposed Regulation, has caused an undue hardship on the Tribe. The proposed Regulation adds new processes outside of those authorized in our Tribal State Compact. We ask the CGCC to withdraw its pursuit of this Regulation.

Cahuilla Tribal Gaming Agency

52702 Hwy 371, P.O. Box 390854 Anza, Ca. 92539
Phone: (951) 763-1200 ext. 138 Fax: (951) 763-4938

Respectfully,

Andrew Hofstetter, Chairman

Joseph Salgado, Commissioner

Cc: Tribal Council, CTGA File

Exhibit A.2

DRY CREEK RANCHERIA
BAND OF POMO INDIANS

September 18, 2008

Dean Shelton, Chairman
State of California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231

Re: Supplement to the September 4, 2008, Association Meeting Record

Dear Chairman Shelton:

The Dry Creek Rancheria Band of Pomo Indians ("Tribe") respectfully submits the following comments as a supplement to the record of the Tribal-State Association ("Association") meeting held on September 4, 2008, during which CGCC-8 was disapproved by the Association. We note that the disapproval of CGCC-8 was based primarily on the objections raised in the Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8, dated February 13, 2008 ("Taskforce Final Report"). We note further that during the September 4th meeting, a motion was approved to leave the meeting record open for fourteen (14) days to allow tribes to submit written comments to supplement the objections made in the Taskforce Final Report. These supplemental comments are to be considered as part of the comments of the Association in accordance with that motion, as well as individual comments of the Tribe's gaming regulatory agency for general purposes. It is with this intent and understanding that we provide the following comments.

One of the key reasons that the Tribe voted against the passage of CGCC-8 was that, by mandating compliance with specific rules like the NIGC's Minimum Internal Control Standards ("MICS"), it purported to impose a duty and consequence on the Tribe that was in excess of what had been agreed upon in its compact. Most of the compacts that are now in effect, including the Tribe's compact (which, like approximately 57 other compacts, was entered into in 1999 and still constitutes the most prevalent form of compact model today within the state), contains no reference to the MICS. The objection is not with the standard itself, but the manner in which CGCC-8 attempts to mandate that it and various implementing rules be followed by the Tribe. For example, Section (b) provides that "[e]ach Tribal Gaming Agency (TGA) shall maintain ...." and Section (c) provides that "[e]ach Tribe shall implement and maintain ...."

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The extent to which the Tribe is placed under any duty to the State with regard to its gaming activities is solely a matter of federal law, as embodied in IGRA. The means for sharing regulatory responsibilities is through a compact. 25 U.S.C. §2710. We do not believe that any action by the Association, which is defined in Section 2.2 of the Compact, was or could have been intended to displace a tribe's sovereign governmental powers or to subordinate those powers to those of the State, even through agreement or majority vote of the Association. ***Indeed, specific regulatory duties are placed directly on the Tribe, which is to be the primary regulator.***

For example: Section 6 of the Compact sets forth specific rules with regard to the ***licensing*** of persons and entities who interact with the gaming operation, and Section 8 requires the Tribe to promulgate and enforce rules that ensure sound regulatory practices for a gaming operation, such as the ***physical safety of patrons and employees*** (Sec. 8.1.2), the ***physical safeguarding of gaming facility assets*** (Sec. 8.1.3), the ***prevention of illegal activity***, including appropriate employee procedures and surveillance systems (Sec. 8.1.4), the ***recording of incidents that deviate from normal operating procedures*** (Sec. 8.1.5), the establishment of ***procedures designed to permit detection of irregularities, theft, cheating, fraud or the like, "consistent with industry practice,"*** (Sec. 8.1.6), the maintenance of a ***barred patron process*** (Sec. 8.1.7), the conduct of an ***audit of the operation by an independent CPA firm*** at least annually in accordance with industry practices for auditing casinos (Sec.8.1.8), adoption of ***rules and regulation for each game (Sec. 8.1.9)*** and the ***publication to the public of those rules, including rules that address the method of play, odds, prize determinations, betting limits, industry standard resolution of patron disputes*** (Sec. 8.1.10), industry standard ***closed circuit televised surveillance systems*** (Sec. 8.1.11) and ***cash cage processes*** (Sec. 8.1.12), ***minimum staff requirements*** for each gaming activity (Sec. 8.1.13), and ***technical standards and specifications for Gaming Devices that meet the industry standards*** for such devices (Sec. 8.1.14), as well as following specific procedures with respect to the ***transportation of gaming devices*** (Sec. 7.4.5).

In addition, the Tribe must also adhere to specific requirements and standards with regard to ***food and beverage handling, water quality, public health conditions, building and safety code adherence, insurance coverages, occupational health and safety conditions, employment discrimination, unemployment and workers compensation, advancement of credit, limitations on accepting certain kinds of public issued checks or vouchers, alcoholic beverage control, Bank Secrecy Act and Internal Revenue Code compliance, emergency service availability, labor relations, and off-reservation environmental impact mitigation processes***. See generally Sec. 10.0.

In sum, virtually every corner of casino regulation already is covered and mandated as a tribal duty in the Compact. What isn't specified in some instances, but could have been, is the particular manner in which the Tribe must accomplish each of these assignments. Instead, through negotiation and agreement in accordance with federal law, the Compact left those details to the sound discretion of the Tribe. The Compact thus specifies that the Tribe's gaming agency is primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and its federally mandated gaming ordinance (Sec. 2.20), and that the Tribal agency has the responsibility "to conduct on-site gaming regulation and control in order to enforce the terms of

this Gaming Compact..." Sec. 7.1. Needless to say, however, the rules and processes must be effective in meeting the specified goals, and the State is granted access to the premises and inspection rights (Sec. 7.4.3), including access to gaming operation papers, books, records, equipment, or places "where such access is reasonably necessary to ensure compliance with this Compact." Sec. 7.4.4.

The question here is thus whether the creation of regulations approved either by the Association or unilaterally by the State may be used, as CGCC-8 suggests, as a vehicle to amend each tribe's individual compact without its express agreement, through the sovereign process of each Tribe, to amend its compact to require it to abide by the proposed regulation's specific regulatory duties. We do not believe that our Compact so provides, and that CGCC-8's attempt to do so violates the Compact and state and federal law, and on that basis we objected to the adoption of that purported regulation as written.

Nevertheless, we respectfully suggest that other means for achieving sound statewide regulatory standards consistent with the Compacts, and particularly through the use of the Association process, exist and should be considered. These views are ours alone, however, and should not be construed as being submitted on behalf of any other tribe or even necessarily echoing their views.

Compact Section 8.4 contemplates the promulgation of regulations intended to "***foster*** statewide uniformity of Class III gaming operations throughout the state [emphasis added]," as opposed to agreeing that there ***must*** be statewide uniformity. Section 8.4.1 therefore sets forth a cooperative process, through the Association, for drafting regulations that are presumably intended to reach that goal, as opposed to requiring the Tribe to abide by regulations which come out of that process, or that may be adopted unilaterally by the State. Were such an interpretation possible, it would effectively result in the Association or the State having the power to amend the Compact and subject the Tribe to State regulatory control. Nothing in the Compact creates that dynamic or opportunity. Indeed, the Compact has explicit dispute resolution provisions in the event that the State and Tribe disagree, which contradicts any notion that the State or even the other tribes, through the Association, can simply impose extra-Compact regulatory requirements on the Tribe without its consent.

But that does not mean that the Association process cannot be effective. A useful example of a successful attempt to reach statewide uniformity in tribal gaming through Association action without mandating conduct or amending the compacts is CGCC-2. That regulation sets forth a standard that both the State and tribes agreed could be followed in order to comply with the compacts' suitability standards for institutions engaged in bond and other complex financing transactions. The rule does not mandate that it be followed, but provides that if it is, the parties will be in compliance with the compact. Because it provides a practical and reasonable process that, even though voluntary, provides compliance assurance (i.e., a "safe harbor") that preserves the regulatory integrity of those financing transactions, it was acceptable to both the State and tribes. It has been in widespread use. Similarly, the fear (albeit unfounded) that there is a void in the regulation of tribal gaming in the absence of mandatory adherence to the federal MICS (the federal enforcement of which was placed in doubt by the CRIT decision) could be alleviated through acknowledgment by the Association that adherence to the MICS is a

means to meet the compact's regulatory requirements and providing a scheme that encourages, rather than mandates, its adoption and enforcement. The practicality of this suggestion is based on the following:

The federal NIGC MICS were created from several years of meetings and conferences in which federal and tribal gaming regulators met with each other and with the assistance of professionals from various disciplines in the gaming industry, including consultants affiliated with various gaming device laboratories with world-wide credibility in the gaming industry. The MICS thus reflect standards that many tribes and non-gaming jurisdictions already follow. They are not highly controversial in their own right, and thus their substance is not the issue.

In our own case, we have adopted the MICS as the ***threshold*** requirement for our own regulatory scheme and as the means to meet the generalized regulatory requirements in the Compact. We believe many other tribes within the State, and nationally, have done the same. Recognition of that fact and that doing so will provide certainty as to whether or not a tribe has promulgated the rules and regulations required under the compact, would encourage others to do so as well. If it did not, the worst case would simply be the status quo, so a failure to adopt the MICS under such a rule would not conflict with the compact and thus would not prejudice either the tribes' or State's rights.

If a regulation were proposed to the Association that, instead of mandating MICS compliance, merely declared that the MICS were viewed by the State and the tribes as a generally accepted means of compliance with the regulatory requirements in the compacts, our own opposition would be substantially diminished and perhaps eliminated (obviously the details are important, particularly in light of our and other tribes' sensitivity to the potential for usurping a tribe's sovereign power to negotiate for itself with respect to any amendment of the compact). A regulation that reflected a consensus that the MICS constitute a recognized standard by which compact compliance may be measured would encourage a tribe to incorporate the MICS into their own rules in order to remove any doubts about the acceptability and soundness of their rules. We submit that the removal of that uncertainty, coupled with the fact that so many of the tribes already follow the MICS, would result in a confirmation that the MICS are in fact in widespread use already, would provide a common baseline for determining compact compliance, and would thus accomplish the goal of fostering and implementing statewide uniformity.

Such a rule would also permit tribes to alter or vary the MICS to the extent necessary for individual circumstances[1] without creating a patchwork of inconsistent regulations, since it would provide a standard frame of reference against which a local alteration could be examined.

Finally, but importantly, we believe that to be effective, any such rule would have to include the availability of a voluntary process for resolving disputes regarding the adoption of and compliance with the MICS. Such a process would strive to avoid, whenever possible (but obviously not in the case of a true emergency), the severely adversarial nature of conflicts that can arise over such issues under the compacts, in which the issue is whether a tribe is in breach and subject to possible compact termination. The availability of an enforceable but alternative

[1] For example, for some small operations, some adaptation is necessary to avoid overkill, and thus the NIGC and most regulatory jurisdictions will consider such alterations.

dispute resolution process that is more in scale with the goal of obtaining effective and uniform regulation, provided the MICS are adopted by a tribe, would further encourage adherence to the MICS, and achieving such an alternative scheme would strengthen the role of the Association generally as a forum for discussing and resolving mutual regulatory concerns under the compacts.

Thank you for your consideration of these comments.

Harvey Hopkins, Chairman
Dry Creek Rancheria Band of Pomo Indians

Elk Valley
Rancheria,
California

2332 Howland Hill Road
Crescent City, CA 95531

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Fax: 707.465.2638
rancheria@elk-valley.com

September 30, 2008

California Gambling Control Commission
Attn: Evelyn Matteucci
2399 Gateway Oaks #100
Sacramento, California 95833

Re: CGCC-8 Comments

Dear Ms. Matteucci:

In furtherance of the September 4, 2008, Tribal-State Association meeting, the Elk Valley Rancheria, California provides the following initial comments.

The Elk Valley Rancheria, California, is a federally recognized Indian tribe ("Tribe") that signed the 1999 tribal-state compact. To date, the Tribe has not amended its tribal-state compact. The Tribe operates the Elk Valley Casino, which includes approximately 320 slot machines, nine (9) table games, and bingo. Pursuant to the express terms of its tribal-state compact, the Tribe does not pay any revenue to the Special Distribution Fund or to the Revenue Sharing Trust Fund.

Since March 2007 when the California Gambling Control Commission ("CGCC") notified California Indian tribes that had entered into tribal-state compacts that it intended to promulgate and adopt CGCC-8, Tribal representatives have participated in the various Tribal-State Association meetings and have periodically provided input regarding CGCC-8.

We understand that the CGCC seeks to promulgate and enforce CGCC-8 because of a perceived lack of national Minimum Internal Control Standards ("MICS") resulting from the court decisions in *Colorado River Indian Tribes v. National Indian Gaming Commission* ("NIGC").

As you are aware, pursuant to the 1999 tribal-state compact, each individual tribe that entered into said tribal-state compact has primary regulatory authority over its tribal government gaming operation. The Tribe is no different. The Tribe responsibly regulates the Elk Valley Casino – as do other tribes in California. Further, in addition to the oversight provided by the CGCC and the Bureau of Gaming Control, the Tribe adopted provisions in its NIGC-approved Gaming Ordinance expressly providing for oversight and enforcement of the MICS by the NIGC.

In short, the Tribe disagrees with the CGCC's attempt to unilaterally seize new, unprecedented and unauthorized regulatory authority over tribal government gaming operations. Instead, the Tribe recommends that the CGCC adopt the Bureau of Gaming Control's position that California tribes should determine whether they *individually*: 1) wish to grant the State an oversight role; or 2) adopt the MICS, including appropriate enforcement authority.

The Tribe adopted the MICS and granted appropriate enforcement authority to the NIGC to enforce said standards. As such, the CGCC's stated rationale for adopting CGCC-8 is not supported in this instance. Likewise, CGCC-8, in large part, is contrary to the Tribe's tribal-state compact.

Based upon the foregoing, the Elk Valley Rancheria, California requests that the CGCC place appropriate conditions on the application of CGCC-8 to California gaming tribes and that those conditions be identical to the Bureau of Gambling Control's position, i.e., individual tribes may consent to State oversight; or 2) individual tribes take steps to ensure application of the federal MICS.

Thank you for your consideration.

Sincerely,

Dale A. Miller

Dale A. Miller
Chairman

cc: Elk Valley Tribal Council
Elk Valley Tribal Gaming Commission
Office of Tribal Attorney

DM:bbd

Exhibit A.4

Paskenta Band of Nomlaki Indians
TRIBAL GAMING COMMISSION
2655 Barham Avenue, Corning Ca 96021
530-528-3533 530-528-3595
www.rollinghillscasino.com

THEODORE PATA, Commission Chairman
JON PATA, Commission Vice Chairman
BRANDIS PATA, Commissioner

2008 SEP 12 AM 10:54

September 11, 2008

California Tribal-State Association
C/O Paskenta Band of Nomlaki Indians
Tribal Gaming Commission
2655 Barham Avenue
Corning, California 96021

Re: Paskenta Band of Nomlaki Indians Tribal Gaming Commission's Comments in Support of Disapproval of CGCC-8

To the California Tribal-State Association:

The Paskenta Band of Nomlaki Indians Tribal Gaming Commission ("Paskenta TGC") submits the comments below as part of the minutes/record of the September 4, 2008 Tribal-State Association meeting. At the meeting, the Paskenta TGC voted to disapprove the California Gambling Control Commission's ("CGCC") proposed regulation CGCC-8 ("CGCC-8").

The Paskenta Band of Nomlaki Indians is a federally recognized Indian tribe ("Tribe") that entered into the 1999 tribal-state compact ("Compact"). The Tribe has not amended its Compact. The Tribe operates 773 gaming devices and 12 table games. Pursuant to the compact, the Tribe does not pay any revenue to the Special Distribution Fund. However, the Tribe contributes to the Revenue Trust Fund annual gaming device fees. Such payments, though, represent flat fees not based upon net win.

Under the Compact, the Paskenta TGC is the primary regulatory authority over the Tribal government gaming operation. In furtherance of its regulatory authority, the Paskenta TGC adopted by regulation the National Indian Gaming Commission ("NIGC") Minimum Internal Control Standards ("MICS") for Class III gaming prior to the opening of the Rolling Hills Casino. Subsequently, the Tribe amended its Gaming Ordinance to include the NIGC MICS as part of such Ordinance and to authorize the NIGC to monitor and enforce compliance with said standards. On May 13, 2008, the NIGC approved said amendment.

Pursuant to CGCC-8, the CGCC seeks to unilaterally impose regulatory standards upon the Tribe, authorize the CGCC to perform compliance reviews/audits of NIGC MICS and to review financials of the Tribe's gaming operations. The Tribe's Compact provides no authority for the CGCC to impose such standards and conditions on the Tribe. In addition, federal law provides no authority for such action.

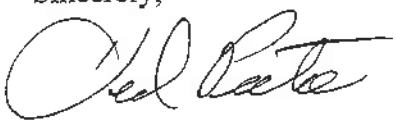
ROLLING HILLS CASINO

In essence, CGCC-8 represents an amendment to the Tribe's compact that requires the Tribe's agreement. The Tribe does not agree to the amendment of its Compact under the terms and conditions set forth in CGCC-8. Further, the Tribe does not agree that Tribal-State discussions of CGCC-8 at Association meetings represent government-to-government negotiations for Compact amendment.

In part, the CGCC seeks to promulgate CGCC-8 because of a perceived lack of NIGC MICS resulting from the court decisions in *Colorado River Indian Tribes v. National Indian Gaming Commission*. As mentioned above, the NIGC MICS have been adopted and enforced in accordance with the Compact by the Paskenta TGC since the opening of the Rolling Hills Casino. Moreover, the NIGC approved the Tribe's amendment to its Gaming Ordinance to include NIGC MICS and NIGC oversight and enforcement authority of the Tribe's gaming operation. Based upon the action already taken by the Paskenta TGC and the Tribe, CGCC-8 is unnecessary, duplicative, and unduly burdensome.

Finally, at the meeting the Bureau of Gambling Control voted to disapprove CGCC-8 with the following recommendation: tribes should determine whether they individually: (1) wish to grant the state an oversight role; or (2) adopt the NIGC MICS, including appropriate enforcement authority. The Tribe recommends that the CGCC not readopt CGCC-8, or if it chooses to readopt the proposed regulation to place appropriate conditions on the application of CGCC-8 and that those conditions be identical to the Bureau of Gambling Control's position, i.e., individual tribes may consent to State oversight; or individual tribes take steps to ensure application of the NIGC MICS.

Sincerely,



Theodore Pata
Commission Chairman

cc: PBNI Tribal Council

Evelyn Matteucci
California Gambling Control Commission
2399 Gateway Oaks #100
Sacramento, California 95833

Exhibit A.5

Rincon Band of Luiseño Indians

PO Box 68 Valley Center, CA 92082 • (760) 749-1051 • Fax: (760) 749-8901

September 18, 2008

2008 SEP 24 AM 11:37

California Gambling Control Commission
2399 Gateway Oaks Drive #100
Sacramento, California 95833

Re: Opposition to CGCC-8

Members of the California Gambling Control Commission:

The Rincon Band of Luiseño Indians ("Rincon Band") is operating its Gaming Operation in compliance with the Rincon Gaming Commission's Minimum Internal Control Standards (which Minimum Internal Controls are no less stringent than those found at 25 CFR 542). and is subject to significant regulatory oversight and enforcement by the Rincon Gaming Commission. As a clear regulatory structure is currently in place and being enforced by the an independent regulatory agency for the Rincon Band's Gaming Operation, the Rincon Band opposes the effort by the CGCC to impose unwarranted and duplicative regulations in the form of CGCC-8 in the strongest of terms. In addition to adopting the Taskforce Report dated February 13, 2008 and opposing CGCC-8 for the purposes stated within, the Rincon Band opposes CGCC-8 for the following reasons:

1. If the State Intends to Pursue the Policy Objectives Behind CGCC-8, it Should Initiate Government to Government Negotiations.

Pursuant to the Compact between the State of California and the Rincon Band, the Tribal Gaming Agency ("TGA") is the primary regulator of all aspects of gaming, gaming operation and management of the Rincon Band's gaming operation. See Compact §§ 7.1, 7.2, 8.1 *see also* 25 U.S.C. 2701 et seq. The Tribal Gaming Agency (also "Rincon Gaming Commission") is solely vested with the authority and responsibility to promulgate and enforce rules and regulations regarding Minimum Internal Control Standards ("MICS"), and indeed the Rincon Band has adopted MICS which are enforced by the Rincon Gaming Commission. There is no language within the Compact, or elsewhere in federal law, which delegates promulgation and enforcement authority of MICS to the State Gaming Agency. It appears that the State may also hold this same position on this issue as the State has entered into Memorandums of Agreement ("MOA") with the Agua Caliente Band of Cahuilla Indians, Sycuan Band of Kumeyaay Indians, Pechanga Band of Luiseno Indians, Morongo Band of Mission Indians, and the San Manuel Band of Serrano Mission Indians which specifically provide each of those tribes submit to the enforcement of MICS by the State Gaming Agency. Should the State Gaming Agency wish to assume a regulatory role that is different that that described within the Compact, the appropriate avenue for such a change would be through government to government negotiations and an

M-281

amendment to the Compact or other mutual agreement. Should the State choose to engage the Rincon Band in government to government negotiations on the policy objectives behind CGCC-8, we suggest that the draft of CGCC-8 prepared by the Attorney Work Group clearly indicates our willingness to discuss this issue.

2. There is no Void in Regulation. The State has Shown no Need for this Regulation.

Even assuming for the sake of argument that the TGA is not the primary regulator of Indian gaming pursuant to the Indian Gaming Regulatory Act ("IGRA") and the clear terms of the Compact, the State has not shown any need to substantially modify the Compact to promulgate and enforce CGCC-8. The CRIT decision did not change the state of the law, nor did the CRIT decision vest additional authority within the State. See Colorado River Indian Tribes v. National Indian Gaming Commission, 451 F.3d 873 (D.C. Cir. 2006). The CRIT decision simply affirmed what we always knew – the NIGC does not have this authority – rather, regulatory authority is to be governed by the terms of the Compact, and under the Compact, the authority lies with the TGA. The CRIT decision did not change the law. The CRIT decision is simply being used by the CGCC as a reason to rewrite the Compact to minimize TGA authority and tribal sovereignty. There is no evidence that any TGA has reacted to the CRIT decision with an abandonment of internal controls.

As primary regulators of our gaming operation, the Rincon Gaming Commission takes its job very seriously and is vigilant in its comprehensive and strict regulation of the Gaming Operation. The Rincon Gaming Commission is staffed with experienced professionals with significant expertise in the regulation of Indian gaming. As further evidence of the Rincon Band's commitment to regulation of our Gaming Operation, the 2008 budget for our Tribal Gaming Agency is $1,868,243, the 2008 budget for security and surveillance is $3,663,869, and the 2008 budget for the Gaming Operation's compliance department is $167,623. The total amount budgeted for gaming regulation and related costs for 2008 is $5,699,735. Furthermore, in a survey conducted by the Rose Institute of State and Local Governments at Claremont McKenna College in 2007 stated that the estimated average annual tribal gaming agency budget for California Indian tribes was $1,556,600 and the projected total amount spent on gaming regulation by Indian tribes in California is $90,282,837 per year. Clearly tribal gaming in California heavily regulated.

As the Rincon Band retains the sole proprietary interest in our gaming operation, we have the most to lose in the event of any tribal MICS violations. Strong and appropriate tribal regulation by the Rincon TGA is beneficial to the Gaming Operation and the Rincon Band. Duplicative regulation in the form of CGCC-8 is not necessary or warranted. The Rincon Band does not oppose the idea of regulation in general. As the CGCC is well aware, our Gaming Operation is already subject to significant regulation by the NIGC, the TGA and pursuant to the express terms of the Compact. State regulation has not been absent as evidenced by the fact that the California Department of Justice - Bureau of Gambling Control has been conducting Compact compliance reviews of the Rincon Band's Gaming Operation since 2001. Through these years of compact compliance review by the Bureau, the Bureau has not alleged that the Rincon Band did not maintain internal controls or otherwise comply with Section 8.1 – 8.1.14 of

the Compact. The absence of internal control and auditing violations is a testament to the effectiveness of the regulatory oversight of the Rincon Gaming Commission.

The Rincon Band opposes ceding any of the Rincon Band's hard fought and retained regulatory authority to the State without an accompanying cession of regulatory power from the State in the form of a Compact amendment.

3. The Compact does not Provide the CGCC Authority to Substantially Alter the Terms of the Compact.

The Compact agreed to by the Rincon Band and the State does not give the State Gaming Agency plenary power to modify the terms of the Compact at will. There is no provision within the Compact which states that the State Gaming Agency may promulgate and enforce the terms of CGCC-8. While the Compact provides the State with access to a Tribe's Gaming Facility and limited inspection rights of "papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance" with the Compact, there is no provision within the Compact which authorizes the State Gaming Agency to alter the terms of the Compact and enact and enforce regulations regarding MICS and auditing. See Compact §§ 7.0– 7.4.4.

Additionally, the argument that the NIGC MICS are an implicit and necessary part of the Compact also fails as the Compact does not include such language. The State was well aware of how to incorporate federal standards into the Compact as evidenced by Section 6.4.7 which requires a TGA to review and consider "all information required under IGRA, including Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees." Failure of the State not to include a reference to a specific requirement of 25 CFR 542 in the Compact does not provide the State Gaming Agency with authority to alter the express provisions of the Compact to include such standards.

Sections 7.0 and 8.0 clearly provide that the TGA, and not the State Gaming Agency, is vested with the authority to promulgate and enforce rules and regulations.

> It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Compact Section 7.1.

The language in 7.1, and Sections 7.2 and 8.0, clearly state that it is the responsibility of the TGA to conduct on-site gaming regulation and ensure that tribal gaming meets the highest standards of regulation and internal controls. As tribal-state gaming compacts are governed by

general principles of contract interpretation, the plain language and specific terms of the Compact must control. See State of Idaho v. Shoshone-Bannock Tribes, 465 F.3d 1095, 1098, (9th Cir. 2006). As the plain language of the Compact vests the TGA with primary regulatory authority, attempted enactment of CGCC-8 by the State Gaming Agency which is contrary to the Compact's specific language would be without effect.

The closest the Compact comes to discussing enactment of the substance of CGCC-8 is in Section 8.1 where the Compact requires the Tribal Gaming Agency to enact rules and regulations regarding (and confirms that the TGA is vested with the primary authority for enforcement of such regulations) providing an audit of the Gaming Operation no less than annually by and independent certified public accountant, and internal controls. See Compact Section 8.1 – 8.1.14 *see also* Compact §§ 7.1, 7.2. The Compact clearly provides that the TGA is proper authority for promulgating and enforcing rules and regulations relating to auditing and internal controls. Without a specific delegation of authority within the Compact to provide that the State Gaming Agency may supercede tribal regulatory authority, then that authority must remain within the Tribal Gaming Agency. Implementation of CGCC-8 would render these express Compact provisions a nullity.

The proposed CGCC-8 circumvents the Compact amendment provisions of the existing Compact. It is a rewrite of sections 7 and 8, which designate the TGA as the entity establishing the minimum internal controls and enforcement of those controls, and replaces the TGA with the State Gaming Agency. The proposal supplants the TGA with the CGCC and as such is subject to the Compact amendment process, not the process for detailing baseline regulations identified in Section 8.4-8.4.1. As the substance of CGCC-8 is more properly the subject of the Compact amendment process, this is an issue that is more properly addressed in a government to government negotiation.

4. Additional Auditing and Compliance Review Requirements are Compact Amendments.

The auditing and compliance review provision of CGCC-8 provides for significant and unnecessary auditing by the CGCC. Such a new requirement is well beyond the scope of the Compact and would constitute a de facto amendment to the Compact. The authority to audit is one best discussed in the Compact amendment context. Currently the Rincon Band's Compact provides for auditing of those Gaming Operations which pay into the Special Distribution Fund ("SDF"). Compact § 5.3. The Rincon Band does not pay into the SDF as we did not operate any Gaming Devices prior to September 1, 1999. This concern appears to be resolved in more recent Compact amendments which provide for State auditing in the event the State receives a revenue share based upon the total "Net Win" of the Tribe. See 2007 Pechanga Compact Amendment at § 4.3.1. It is clear that it is helpful for the State to retain auditing authority when receiving a revenue share based upon Net Win. Based upon those recent Compact amendments, it is clear that the State is aware that inclusion of such authority within the Compact is necessary to ensure that such authority is retained. The fact that the Compact lacks broad auditing authority for the State Gaming Agency does not by itself serve as a source of authority for the State Gaming Agency to enact de facto Compact amendments on its own accord.

Government to Government Discussions are Appropriate in this Instance.

The proper forum for State Gaming Agency authority over Minimum Internal Control Standards, auditing and additional enforcement authority is the Compact amendment process. Any effort other than a government to government negotiation for amendment of the Compacts is void ab initio.

The Rincon Band is encouraged by the fact that that State would like to see changes to the Compact. The Rincon Band would like to see changes to the Compact as well. We suggest that out of respect for the sovereignty of both the Tribe and the State that the CGCC encourage the Governor's office to meet with the Rincon Band to discuss amendments to our Compact which could be mutually beneficial. We do not feel that it is necessary for an additional state bureaucracy to be built up for the purpose of unnecessary, burdensome, and duplicative regulation, especially in these lean economic times. Nevertheless, the Rincon Band is always willing to consider any proposals that the State may have for amending the Compact.

Respectfully,

Bo Mazzetti
Vice Chairman
Rincon Band of Luiseño Indians

Memorandum

TO: Tribal-State Association

FROM: Rumsey Indian Rancheria of Wintun Indians of California

DATE: September 4, 2008

RE: Rumsey Band's Objections To CGCC-8

The Rumsey Band adopts in its entirety the Tribal-State Association's Regulatory Standards Taskforce February 13, 2008 Final Report regarding the California Gambling Control Commission's proposed regulation, CGCC-8. The Rumsey Band also raises the following specific objections to CGCC-8, and requests that the CGCC address these objections.

1. CGCC-8 Is An Attempt To Amend The Compact Through Regulation

According to the CGCC's April 23, 2008 response to the Task Force Final Report, CGCC-8 "is an exercise of the [CGCC's] authority under Sections 7.4, 7.4.4, 8.4 and 8.4.1 of the Compact." (Response, p. 6.) On their face, however, none of these Compact sections allow the CGCC to impose on the Rumsey Band or its Tribal Gaming Agency ("TGA") through CGCC-8 the requirement to adopt internal control standards at least as stringent as the federal Minimum Internal Control Standards ("MICS"), to submit financial audits to the CGCC, or to submit to MICS compliance reviews/audits by the CGCC. Indeed, no provision of the Compact between the State and the Rumsey Band anywhere even mentions MICS.

The Compacts the State signed with four Southern California tribes in 2006 proves that CGCC-8 is an improper Compact amendment. Those Compacts all included Memoranda of Agreement that imposed on the tribes at issue the obligation to maintain and implement MICS, just as CGCC-8 attempts to do. If the CGCC truly always had, as it claims, the power under pre-2006 Compacts to do all that CGCC-8 provides, it would not have had to include the Memoranda of Agreement in the 2006 Compacts.

Moreover, the Compact, at Section 8.1, expressly vests the *TGA* with the authority to promulgate rules governing the topics in Sections 8.1.1 through 8.1.14 and to ensure their enforcement in an effective manner. Section 8.1 is a recognition of the TGA's jurisdiction over these areas. Nothing in Section 8.1 confers jurisdiction on the State to enforce the TGA rules pertaining to the gaming operation.[1] As such, CGCC-8 is an attempt to adopt a regulation that materially alters express provisions of the Compact as it exists. This the CGCC may not do.

---

[1] Compact Section 7.4, which only authorizes the CGCC to inspect Cache Creek Casino's Class III records where reasonably necessary to ensure compliance with the Compact, cannot be read to wipe Section 8.1 out of existence. Section 7.4 simply allows the State to make sure rules governing the subjects of Sections 8.1.1 through 8.1.10 are in place, and to review whether the TGA has a mechanism in place to ensure enforcement of those rules.

If the State wishes to implement the provisions of CGCC-8, it must engage in government-to-government negotiations with the Rumsey Band (and every other tribe) to amend the Compact.

2. THE RUMSEY BAND HAS SUBMITTED TO NIGC OVERSIGHT

With respect to the Rumsey Band, at least, CGCC-8 is redundant, even if it were appropriate. On December 4, 2007, the Rumsey Tribal Council amended the Tribe's gaming ordinance to allow the NIGC to continue MICS enforcement, just as it had prior to the *Colorado River Indian Tribes v. NIGC* decision. The NIGC approved the amended ordinance on January 11, 2008. With the continued regulatory overisight from the NIGC, any claimed State authority is unnecessary, redundant and burdensome.

3. THE RUMSEY BAND HAS SUBMITTED AN ALTERNATIVE, APPROPRIATE PROPOSAL

Some months back, the Rumsey TGA submitted to the Tribal-State Association an alternative to CGCC-8. That proposal highlighted the authority the CGCC *actually has* under the Compact. Specifically, under the Rumsey proposal, each tribal gaming agency would maintain a System of Internal Controls ("SIC") that would equal or exceed the agency's established MICS. The CGCC, in turn, could ensure each tribe's compliance with the SIC by conducting compliance reviews of the tribe's gaming operation. The CGCC would then provide a draft written report of its findings to the tribe, which could either accept or dispute the findings. Disputes that could not be resolved informally or by the full CGCC would then be subject to the Compact dispute resolution process.

The Rumsey Band continues to believe that no additional regulation is necessary. If the CGCC insists on implementing a regulation, that prepared by Rumsey's TGA is the only proposal that complies with the Compact. In its April 23, 2008 response to the Task Force Report, the CGCC claims it integrated into CGCC-8 portions of the Rumsey proposal. Substantively speaking, that is not true. Moreover, the CGCC never provided the Rumsey TGA any formal comments or response to its proposal.

4. THE CGCC TREATS TRIBES AND CARD ROOMS DIFFERENTLY

The CGCC's April 23, 2008 response to the Task Force Report disputes the conclusion that CGCC-8 represents disparate treatment of card rooms and tribes by the CGCC. As proof, the CGCC cites the many pages of regulations it does have with respect to card rooms. The CGCC, however, does not dispute that it has no MICS in place for non-tribal gaming facilities in California.

The CGCC has plenary jurisdiction over non-tribal gaming facilities in California, yet does not impose on them MICS oversight. Tribal casinos such as Cache Creek Casino are subject to MICS oversight from tribal gaming agencies and the NIGC, and compact compliance oversight from the CGCC, yet the CGCC doggedly continues to assert its right to impose even further regulation on tribal casinos in the form of CGCC-8. It is hardly surprising that tribes view the CGCC's attempt to saddle them with CGCC-8 as discriminatory, and nothing in the CGCC's April 23 response to the Task Force Report demonstrates otherwise.

Exhibit A.7

Torres Martinez Gaming Commission
3089 Norm Niver Rd. Salton Sea Beach, CA 92274
Office (760) 395-1200 Ext. 7135; Fax (760) 395-0415

September 18, 2008

Evelyn Matteucci
State of California Gambling Control Commission
2399 Gateway Oaks Dr #100
Sacramento CA 95833-4231

Re: Objections to CGCC-8

Dear Mrs. Matteucci:

The Torres Martinez Gaming Agency (TMGA) was present for the September 4th Tribal-State Association meeting held at Rolling Hills Casino, Corning, CA. During this meeting the California Gambling Control Commission (CGCC) proposed CGCC-8 regulation to the gaming Tribes of California for approval to impose a State Minimal Internal Control Standard (MICS) on their tribal gaming enterprises. The motion to approve such regulation was denied by a majority vote of the Tribal-State Association that afternoon, followed by a motion made and passed (majority vote) to have a 14-day comment period for Tribes that want to present to the State their individual CGCC-8 regulation vote reasoning.

The TMGA recognizes and supports the importance of the CGCC's regulatory oversight per our State Compact; however it so happens that within this same Compact the TMGA is designated as primary regulator of our gaming facility and operation. Thus the TMGA believes the proposed CGCC-8 regulation means to create an unnecessary duplication of regulatory monitoring. In fact both the TMGA and the National Indian Gaming Commission (NIGC) have already been performing their regulatory roles above accepted standards. Conceptionally, we perceive the proposed CGCC-8 regulation as pairing both Minimum Internal Controls Standards (MICS) and Tribal Internal Control Standards (TICS) that the TMGA continues to adhere to since opening of our gaming facilities.

For the record the TMGA objects to the above-mentioned regulation for the following reasons:

- The State of California already plays a prominent regulatory role as agreed to in our gaming Compact.
- The TMGA has adopted Tribal Internal Controls, and monitors and enforces industry standard security regulations at our gaming facility that are, at minimum, as stringent as the federal standards proposed by the state.

Torres Martinez Gaming Commission
3089 Norm River Rd. Salton Sea Beach, CA 92274
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- The NIGC, a federal regulatory agency, already audits and enforces compliance with our standards.
- The CGCC-8 regulation will duplicate the regulatory monitoring at our gaming facility and merely increases California's debt problem by creating more unnecessary costs for our Tribe and California state tax payers.

In conclusion, the TMGA has thoroughly considered the proposed CGCC-8 regulation and in our opinion it falls outside the scope of State authority to mandate such regulation over what already applies and works quite effectively and efficiently. The State's proposed regulation basically attempts to add new processes and procedures that are nowhere suggested or authorized in our Tribal gaming Compact.

It truly matters to us that this comment letter will assist State regulators in succinctly understanding our position and consideration due our sovereign status. Please contact me directly should you require further information or details on this important issue.

Sincerely,

Alex Sanchez
TMGC, Executive Director
Tribal-State Association, Delegate

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

DIVISION OF LAW ENFORCEMENT
P.O. Box 168024
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September 29, 2008

Mr. Dean Shelton, Chairman
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, California 95833-4231

RE: Minimum Internal Control Standards, CGCC-8

Dear Chairman Shelton:

As the law-enforcement component of the "State Gaming Agency" described in the tribal-state compacts, the Department of Justice is very concerned that tribal gaming operations in California be conducted in accordance with strict internal controls, and that those controls be enforced rigorously by the tribal gaming agencies having responsibility for them. Among other things, the purpose of the Compacts is "to Develop and implement a means of regulating Class III gaming . . . on the Tribe[s'] Indian lands *to ensure it's fair and honest operation* in accordance with [the Indian Gaming Regulatory Act] . . . ." (See Compacts, § 1.0(b).) By addressing matters such as cash handling and counting, documentation, game integrity, auditing, and surveillance, a gaming Tribe's maintenance and enforcement of internal controls furthers the State's legitimate interest in discouraging theft, embezzlement, and other criminal activity—conduct that is of proper concern to the Department of Justice in light of California's criminal-law jurisdiction on Indian lands. (18 U.S.C.A. §§ 1162, 1166(d); Compacts § 8.2.) And, of course, by virtue of its entitlement under the Compacts to share in gaming revenue (Compacts § 5.0), the State is properly interested in preventing loss of casino revenues to theft or embezzlement. It is, therefore, appropriate that the Commission should identify a system of internal controls, such as the Minimum Internal Control Standards (MICS) adopted by the National Indian Gaming Commission (NIGC; 25 C.F.R. Part 542) as the minimum standard against which California would measure the Tribes' compliance with their compact obligations.

Our opposition to the Commission's proposed CGCC-8 has not been about the need for internal controls in tribal casino operations or, indeed, about the merit of using the NIGC MICS as a minimally acceptable standard for internal controls. Our opposition has only been about the necessity for imposing a system of MICS on all tribal gaming operations in California when it appears that most gaming Tribes have either already adopted internal controls that are comparable to the NIGC MICS or that they are willing to do so as an exercise of their own sovereign discretion. Gaming Tribes are certainly no less concerned than is the State to prevent criminal activity within their casino operations and to safeguard against loss due to customer or

employee access to cash or cash equivalents. As you are aware, several Tribes from across the Nation, including Tribes from California, participated in the development of the NIGC MICS. (See 71 Fed. Reg. 27386 (May 11, 2006).)

Truly successful tribal-state regulation of Class III gaming in California can only be the result of genuinely cooperative efforts between the gaming Tribes and the State—efforts that reflect a recognition of the government-to-government relationship that necessarily informs joint regulation pursuant to compact. While we do not doubt the Commission's authority under the Compacts to establish uniform regulatory standards concerning internal controls, we do not believe that this authority need be exercised in the manner reflected in CGCC-8, nor do we believe that the public interest compels imposition of a regulatory standard in the manner proposed by that regulation.

Accordingly, we are suggesting that the Commission substitute the following language for what is presently in paragraph (b) of CGCC-8:

> (b) The State Gaming Agency construes Sections 6.0, 7.0, and 8.0 of the Compacts to impose on tribes an obligation, among others, to adopt and maintain written internal control standards that apply to its operation and support of Class III gaming. The State Gaming Agency will deem a tribe to be in compliance with this obligation if the Tribal Gaming Agency (TGA) demonstrates that it has adopted and maintains written internal control standards that equal or exceed the Minimum Internal Control Standards set forth at 25 C.F.R. Part 542 (as in effect on October 1, 2006, as may be amended from time-to-time) (hereafter MICS).
>
> (1) In recognition of the importance of adequate internal controls to the State, the State Gaming Agency regards either of the following to be a material breach of the Compact.
>
> (A) An unreasonable failure to maintain written internal control standards that are at least as stringent as the MICS;
>
> (B) An unreasonable failure to afford the Bureau of Gambling Control access to, and an opportunity to copy, the Tribe's written internal control standards or amendments thereto when requested.
>
> (2) Nothing in subparagraph (1) should be construed to preclude the State and a Tribe from agreeing to binding arbitration as the means for deciding whether a Tribe's internal controls are at least as rigorous as the MICS.

In our view, this amendment would provide the Commission with a standard by which to measure a Tribe's compliance with the obligation to adopt adequate internal controls, while, at the same time, preserving the government-to-government relationship and emphasizing the importance of internal controls to the State.

Under Section 11.2.1 of the Compacts, the State may unilaterally terminate the agreement

upon a judicial determination that the tribe is in material breach. Maintenance and enforcement of an adequate system of internal controls by tribal gaming agencies is an essential part of preserving a casino operation free from criminal activity. The State has a right under the Compacts not only to assure itself that Tribes are meeting their part of the bargain in this critical area of regulation, but also the right to treat unreasonable non-compliance as a material breach.

Thank you for your consideration.

Sincerely,

MATTHEW J. CAMPOY
Interim Chief
Department of Justice
Bureau of Gambling Control

For EDMUND G. BROWN JR.
Attorney General

CALIFORNIA GAMBLING CONTROL COMMISSION RESPONSE TO TRIBAL TASK FORCE REPRESENTATIVES FINAL REPORT STATEMENT OF NEED RE: CGCC-8, DATED FEBRUARY 13, 2008.

April 23. 2008

INTRODUCTION

On February 13, 2008, the State Gaming Agency (SGA) Association and Task Force representatives to the Association and Task Force meetings at which CGCC-8 was discussed were presented with a copy of the report entitled, "Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8, February 13, 2008" (Report). While the SGA representatives provided verbal input regarding the matters covered in the Report during the Association and Task Force meetings involving CGCC-8, the actual drafting of the Report was accomplished by Tribal Task Force representatives and their counsel. Accordingly, this Response is intended to provide the Association with the views of the California Gambling Control Commission (Commission, CGCC) regarding the Report's assertions and to provide the Commission's position with regard to the issues discussed in the Report, including the Statement of Need. The headings below and their content respond to the headings and content in the Report.

At the outset, the Commission wishes to acknowledge the hard work and professionalism of the Tribal Task Force participants. CGCC-8 prompted an unprecedented response from tribal representatives and the sheer number of Task Force participants made the process arduous. Nevertheless, in spite of strongly held feelings about many aspects of CGCC-8, all parties acquitted themselves with professionalism. This Response is made in the same spirit.

STATEMENT OF NEED

The Draft Statement of Need alluded to the CRIT decision and its effect on oversight of Tribal Gaming by the NIGC. While the Commission continues to believe that the decision did indeed leave a void in independent, non-tribal oversight of Tribal Gaming regulation, in response to widespread disagreement with that assertion and in response to language suggested by the Rumsey Rancheria, the Commission modified the Statement and the Purpose section of CGCC-8 (CGCC-8 section (a)) to reflect the other aspect of the need and purpose of the regulation: to provide an effective and uniform manner in which the SGA can conduct the compliance reviews contemplated in Compact Sections 7.4 and 7.4.4. The reviews include assuring Tribal (and TGA) compliance with the requirements of Compact Sections 6.1 and 8.1 – 8.1.14.

We agree with the Report that the CRIT decision does not and cannot change the terms of the Tribal-State Gaming Compact (Compact). However, we disagree that CGCC-8 attempts to amend the terms of the Compact. For reasons expressed in more detail in the section on Legal Authority, we believe the adoption of CGCC-8 is well within the Commission's authority, as provided in the Compact.

Moreover, while we agree with the repeated assertions of Tribal representatives that the NIGC MICS remain the applicable standards for tribal gaming operations in California, we reiterate that including the NIGC MICS as a baseline in CGCC-8 fosters the uniformity goals expressed in Compact Section 8.4 and facilitates the SGA's exercise of its compliance authority and responsibility found in Section 7 of the Compact. We also are constrained to point out that CGCC-8 does *not* require any tribe to adopt the NIGC MICS in carrying out its responsibilities under Sections 6 and 8. CGCC-8 requires that whatever MICS a Tribe may choose to adopt meet or exceed the requirements of the NIGC MICS. Further, CGCC-8 provides for variances (CGCC-8 section (l)) and for consultation between the SGA and individual tribes and the Association as a whole regarding the effect of changing technology on compliance matters (CGCC-8 section (m)).

Finally, we disagree with the Report's assertion that CGCC-8 provides for financial audits by the state. No such language was included in the draft upon which the Report was based and, in response to concerns raised by a number of Tribes, the version of CGCC-8 approved by the CGCC (March 27, 2008) for consideration by the Association contains specific language eschewing such authority. (CGCC-8 section (h).)

ECONOMIC IMPACT

First, as outlined above, the Commission reiterates that CGCC-8 has not and does not provide for an annual financial audit by the SGA.

Second, while any outside review must entail the use of some gaming operation staff resources, the SGA is dedicated to working with individual TGA's to minimize the impact of compliance reviews. We believe that through consultation with Tribal regulators on a case-by-case basis, the impact that such compliance reviews may have on individual gaming operations will be minimized. We are acutely aware that our ability to efficiently conduct meaningful compliance reviews depends to a large extent on the cooperation of individual TGA's and gaming operation personnel.

APPLICATION TO CARDROOMS

As stated in more detail below, the State's authority to promulgate CGCC-8 is found in the Compact. When the 1999 Compact was signed, the California Gambling Control Commission was not even in existence. For a number of

years, the Commission's staffing levels were minimal and its focus with regard to regulations applicable to cardrooms was on the licensing process. Extensive regulations have been developed regarding licensing of owners, and key employees; work permits for other employees, registration of manufacturers and distributors, third party providers, the discipline process, emergency preparedness and evacuation, and responsible gambling; in addition to accounting and financial reporting regulations. Included in regulations currently pending in the formal Administrative Procedure Act rulemaking process are regulations pertaining to MICS for check cashing, extension of credit, automatic teller machines and abandoned property. MICS for drop and count procedures, cage requirements, security, and surveillance have been proposed to the cardroom industry in informal comment sessions and are pending the formal process. The Bureau of Gambling Control also has regulations regarding cardroom operation and the game authorization process.

The assertion that CGCC-8 represents a "discriminatory" approach to gaming regulations by the CGCC is unfounded. Commission and Bureau of Gambling Control cardroom regulations run some 130 pages, not including forms. The extent of the State's authority over cardrooms as demonstrated in the Gambling Control Act and the Discipline regulations compared to the division of authority between sovereign signatories to the Compact presents a stark comparison. Moreover, in contrast to the Report's assertions, CGCC-8 neither ignores the fact that California tribes follow the NIGC MICS – that assumption was implicit in the development of CGCC-8 – nor does the Commission "not respect the ability of tribal gaming agencies to enforce such standards." CGCC-8 is not discriminatory. It is an exercise of the State's compliance overview authority found in the Compact. The Compact is clear in providing that the SGA may inspect the gaming operation and associated documents to assure compliance with the Compact.

FOSTERING UNIFORMITY

The Report incorrectly conflates Tribal (and TGA) use of the NIGC MICS in carrying out regulatory responsibilities under the Compact with SGA review of Compact compliance. The Commission does not dispute the Report's assertion that gaming tribes played a major role in the development of the NIGC MICS, nor does the Commission dispute the Report's assertion that the NIGC MICS are the standard for California gaming tribes. On the contrary, those assertions were essential to the Commission decision to adopt the NIGC MICS as a baseline or bench mark for compliance review. The selection of a benchmark already employed by California's gaming tribes was seen as a way of avoiding arbitrariness in compliance reviews. The Commission reasoned that if Tribes in developing their own MICS used the NIGC MICS as a baseline, the use of the same baseline by the SGA assured uniformity of review and consistency with the uniformity goals of Compact Section 8.4.

CGCC-8 does not require any Tribe to adopt the NIGC MICS. Nor does it seek to amend the Compact. The Compact sets out the areas for which Tribes and TGA's must develop internal controls and must ensure the gaming operation is run pursuant to those controls. (See Sections 6.1, 8.1 – 8.1.14.) CGCC-8 does not seek to expand, nor by its terms does it expand those Compact terms. It sets a benchmark for compliance review, a benchmark that the Tribes have repeatedly asserted they already use, and thus the industry standard for tribal gaming in California. Further, it is a benchmark that explicitly takes into consideration the size and scope of the gaming operation.

ALTERNATIVES TO CGCC-8

From the Commission's perspective, Compact negotiations are not called for because the SGA's compliance review authority is clearly established in the existing Compact. While individual agreements could accomplish the same purpose, a uniform regulation adopted in accordance with the Compact provisions specifically authorizing such regulations seems much more efficacious. It ensures uniformity and fairness in SGA compliance review and, by taking into account the scope of individual gaming operations, assures a level playing field for all tribes.

Tribal Task Force members also proposed alternative language that contemplated either waiting for new federal authority for the NIGC or eliminating SGA compliance review via CGCC-8 if the Tribe and the NIGC agreed to NIGC oversight through either MOU/MOA's or changes to Tribal gaming ordinances. Neither of these approaches takes into account the State's sovereignty as a signatory to the Compact. The State/SGA authority to inspect the gaming facility and all gaming operation or facility records relating thereto (Section 7.4) and the SGA's authority to be granted access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with the Compact (Section 7.4.4) are derived from the Compact. They are not and cannot be made dependent upon the statutory authority of the NIGC, or upon other arrangements between the NIGC and individual tribes.

Both the Tribe and the State are sovereigns. Each has sovereignty the other must respect; each has the right to demand that the other sovereign comply with its responsibilities and obligations mutually agreed to in the Compact.

ALTERNATIVE LANGUAGE TO CGCC-8

As the report indicates, there were two alternate language proposals submitted. However, the Commission representatives were repeatedly and pointedly reminded at Task Force meetings that neither of these proposals was agreed to by the tribal regulatory Task Force members as a group and that there were a number of Tribes whose opposition to CGCC-8 would not be changed by language changes. Nevertheless, the Commission adopted language from each

proposal. Much of the Purpose section of CGCC-8 (section (a)) is taken from the Rumsey proposal and the language in CGCC-8 section (f) regarding Agreed Upon Procedures Audits comes from the Attorney Work Group Proposal. Further, both the Attorney Work Group and Rumsey proposals adopt the NIGC MICS as a benchmark.

With regard to language inserting binding arbitration into the dispute resolution process, it has been the Commission's position that CGCC-8 derives its authority from the Compact and therefore, the dispute resolution process in CGCC-8 should follow that found in the Compact.

LEGAL AUTHORITY

It is the position of the Commission , as it has been throughout this process, that legal authority for CGCC-8 is firmly grounded in the Compact.

First, as a general proposition, the State, like the Tribe, has the right under the Compact to demand that the other signatory comply with the terms of the Compact. In fact, each signatory has waived sovereign immunity with regard to matters of Compact compliance. (See Sections 9.4 and 11.2.1(c).)

Second, Sections 8.4 and 8.4.1 clearly contemplate that the SGA may pass regulations regarding the Tribe's gaming operations in order to foster statewide uniformity of regulation of Class III gaming operations. Section 8.4 provides:

> "In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state, rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, or 8.0 shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1."

CGCC-8 is clearly such a regulation. It does not, as arguably it could, require the TGA to make its "rules, regulations, standards, specifications, and procedures regarding matters encompassed by Sections 6.0, 7.0, or 8.0 . . . consistent with regulations adopted by the State Gaming Agency." (Section 8.4.1.) Instead, it establishes as a benchmark the industry standard for MICS, the NIGC MICS. It does not purport to require Tribes to adopt the NIGC MICS in whole or in part, (though throughout this process we have been repeatedly told that tribes have already adopted the NIGC MICS) but instead requires that whatever MICS each TGA adopts be equal to or more stringent than the NIGC MICS. The NIGC MICS were chosen as a benchmark because the Commission was repeatedly assured by gaming tribes that it was both the industry standard and the MICS of choice for California gaming tribes.

CGCC-8 does not purport to usurp the primary role of TGA's in establishing and enforcing tribal MICS. CGCC-8 establishes guidelines and procedures for the SGA in exercising its authority under Sections 7.4 and 7.4.4 to independently ensure that the TGA's are carrying out their responsibilities under the Compact; in short, to ensure compliance with the Compact. Indeed, Compact Section 7.4 makes clear that notwithstanding the primary regulation and enforcement role of the TGA, the SGA may inspect the Tribe's gaming facility and gaming operation or facility records with regard to Class III gaming, subject to conditions outlined in Sections 7.4.1 through 7.4.3:

> "Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto . . . "

Further Section 7.4.4 makes clear the SGA's broad right of access to documents, equipment and facilities:

> "Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with this Compact."

Thus, it is clear that the SGA may promulgate regulations in respect to matters encompassed by Sections 6.0, 7.0 and 8.0 in order to foster statewide uniformity of regulation of Class III gaming operations throughout the state. Further, it is clear that notwithstanding that the Tribe's have primary responsibility for administering and enforcing the Compact's regulatory requirements, the SGA has the right to inspect the Gaming Facility and Gaming Operation or Facility records and, notwithstanding any other provision of the Compact, the SGA is to be allowed access to papers, equipment and places where such access is reasonably necessary to ensure compliance with the Compact.

CGCC-8 is a regulation authorized under Section 8.4 to ensure uniformity in the regulation of matters encompassed by Sections 6.0, 7.0 and 8.0. It is an exercise of the SGA's authority under Sections 7.4, 7.4.4, 8.4 and 8.4.1 of the Compact. Thus is it not an "amendment" of the Compact nor does it change the terms of the Compact. It is not, by its language or intent, an attempt to limit or reduce the primary role of the TGA in the regulation and enforcement of Class III gaming.

DUPLICATIVE

The Report points to the Governor Schwarzenegger's letter of March 30, 2007 to the Senate Committee on Indian Affairs, quoting the governor as follows:

"[California's] approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate NIGC's activities."

CGCC-8 is not, as the Report asserts, "entirely inconsistent" with the Governor's message to the Committee. In fact, it is not at all inconsistent. As has been made clear at the Task Force meetings and as Chairman Shelton has made clear at the March 27, 2008 Commission meeting, the CGCC has and will continue to make every effort to coordinate with the NIGC. However, SGA compliance reviews are not duplicative of NIGC reviews; they are a legitimate exercise of the State's authority under the Compact. As NIGC Chairman Philip Hogen's April 17, 2008 written testimony to the Senate Indian Affairs Committee Oversight Hearing Committee indicated: "To put the regulation of tribal gaming in proper context, we need to appreciate that the vast majority of the regulation of tribal gaming is done by the tribes themselves, with their tribal gaming commissions and regulatory authorities. In many instances, where tribes conduct Class III or casino gaming, state regulators also participate in the [regulatory] process. NIGC has a discrete role to play in this process and is only one partner in a team of regulators." The SGA focus is Compact compliance; the NIGC has no interest in, nor authority with regard to Compact compliance. Further, to assert that because the NIGC has an oversight role with regard to internal controls the State should forbear from exercising its compliance review authority under the Compact is to ignore the State's role as a sovereign Compact signatory.

The fact that tribes have already put into place standards "at least as stringent as NIGC MICS" does not make CGCC-8 duplicative. Nor does the fact that a number of Tribes have changed their gaming ordinances or entered into agreements purporting to grant the NIGC "authority" to monitor and enforce tribal compliance with those standards. The loss of such authority as a result of the CRIT decision brought focus on the need for State compliance oversight. The authority for such oversight has always existed in the Compact.

Finally, the Report's assertion that CGCC-8 contemplates financial audits such as those found at 25 U.S.C. section 2710(b)(2)(C) is unfounded. The Commission has consistently indicated that CGCC-8 was not designed to facilitate such audits, and language added to the March 2, 2008 version of CGCC-8 (CGCC-8, paragraph (h)) makes that explicit.

As stated on many occasions, the Compact provides the State with the authority (and responsibility) to review tribal standards to ensure compliance with the Compact. Neither tribal regulatory activities, nor NIGC regulatory activities displace or substitute for such State compliance reviews.

RECOMMENDATION

The Commission is well aware of the widespread and persistent opposition to the proposed CGCC-8 among many Task Force and Association members. Nevertheless, we ask that you re-consider these positions.

As we have stated on many occasions during this process, the Commission expects that the vast majority of gaming tribes have standards in place and run their gaming operation according to those standards in compliance with the Compact. However, that does not alter the State's clear authority to conduct compliance reviews. Further, from the perspective of the SGA, the State not only has the authority to conduct compliance reviews, but the responsibility as well. The public as well as the legislative and executive branches of state government have made that clear. CGCC-8 simply outlines a process and sets a uniform benchmark for such reviews. It does not arrogate to the State any authority not already found in the Compact. It does not prescribe specific standards. Rather, it sets a uniform benchmark for such standards; a benchmark that the Report asserts the tribes already employ.

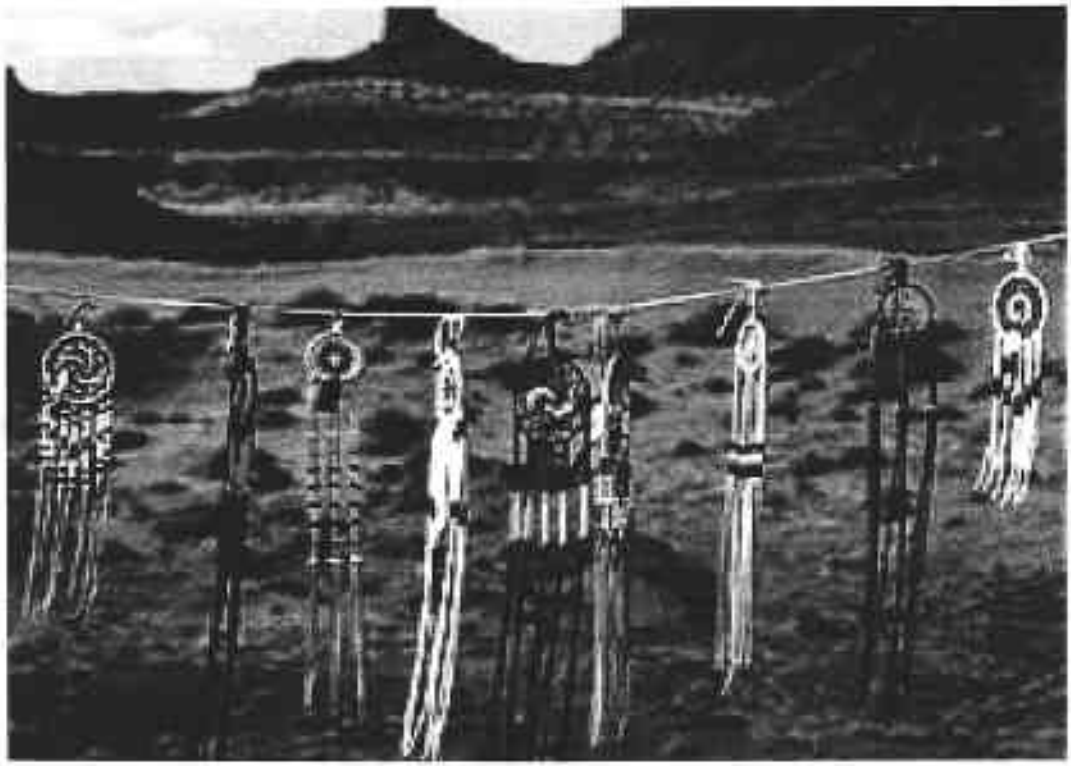
The Commission fully realizes that any on-site review takes time and resources on the part of the tribal gaming operation and is fully committed to working with tribes to accomplish these reviews in the most efficient manner possible. Additionally, the Commission realizes that the efficacy of such reviews is dependent in large part on the cooperation of the tribes.

CGCC-8 is respectful of tribal sovereignty. It does not purport, nor does its language suggest, an intent to infringe on the primary regulatory role of the TGA. It establishes a process and benchmark designed to foster statewide uniformity of regulation of Class III gaming while at the same time recognizing individual tribal sovereignty and wide-ranging differences in the size and scope of gaming operations.

Exhibit C

National Indian Gaming Commission

Government Performance and Results Act
Strategic Plan for Fiscal Years 2009 – 2014



OVERVIEW

The Commission

The National Indian Gaming Commission ("Commission") is an independent regulatory agency of the United States established pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA"). The Commission was created to fulfill the mandates of IGRA of fostering tribal economic development. The Commission became operational in 1993, and is comprised of a Chairman and two Commissioners, each of whom are appointed to three-year terms.

The Commission establishes policy, oversees the agency, and is responsible for carrying out the duties assigned to it by IGRA. The Commission is authorized to: conduct investigations; undertake enforcement actions, including the issuance of notices of violation and closure orders, and the assessment of civil fines; review and approve management contracts; and issue such regulations as are necessary to meet its responsibilities under IGRA.

The Commission provides Federal oversight to approximately 443 tribally-owned, operated, or licensed gaming establishments operating in 29 states. The Commission maintains its headquarters in Washington, D.C., and has five regional offices and four satellite offices. The Commission established its regional structure to increase effectiveness and improve the level and quality of services that it provides to tribal gaming regulatory authorities. The regional offices are vital to executing the Commission's statutory responsibilities and securing industry compliance with IGRA. The Commission's efficiency and effectiveness have improved as a result of locating auditors and investigators geographically closer to Indian gaming facilities, as regular visits enable better oversight of tribal compliance with regulations and allows for timely intervention where warranted. In addition to auditing and investigative activities, the Commission field staff provides technical assistance, education, and training to promote a better understanding of gaming controls within the regulated industry, and to enhance cooperation and compliance. Further, the Commission serves as a clearinghouse for vital information sharing between the tribes, Federal agencies, and the states and other stakeholders, such as law enforcement and public safety agencies.

The Indian Gaming Regulatory Act of 1988

The rise of tribal government-sponsored gaming dates back to the late 1970's when a number of tribes established bingo operations as a means of raising revenues to fund tribal government operations. At approximately the same time, a number of state governments were also exploring the potential for increasing state revenues through state-sponsored gaming. By the mid-1980's, a number of states had authorized charitable gaming, and some were sponsoring state-operated lotteries.

Although government-sponsored gaming was an issue of mutual interest, tribal and state governments soon found themselves at odds over Indian gaming. The debate centered on

VISION

An Indian gaming industry in which Indian tribes are the primary beneficiaries of gaming revenues; gaming is conducted fairly and honestly by both operators and players; and tribes and gaming operations are free from organized crime and other corrupting influences.

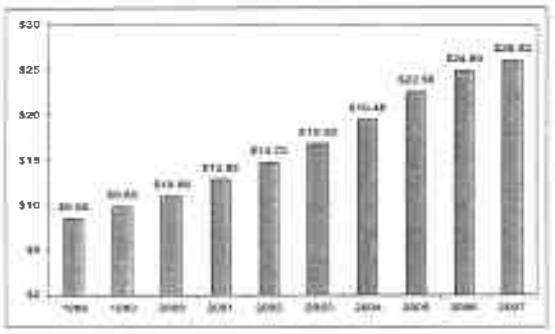
MISSION

To effectively monitor and participate in the regulation of Indian gaming pursuant to the Indian Gaming Regulatory Act in order to promote the integrity of the Indian gaming industry.

About the Vision and Mission

Indian tribes as the primary beneficiaries of gaming revenues...

Indian gaming revenues have grown at a rapid rate since IGRA was enacted in 1988. The most recent totals for Indian gaming revenue for 2007 stood at over $26 billion. With these increased resources, tribes have been able to strengthen tribal governments, better provide for the general welfare of their respective tribal members, reinvest in the expansion of gaming facilities, and diversify into other economic growth opportunities. As this economic development and prosperity continues and expands to include a broader number of tribes and tribal members throughout the United States, the Commission intends to ensure such economic development benefits the participating tribes.



Growth of Indian Gaming Revenues (in Billions)

Gaming conducted fairly and honestly by both operators and players...

In the past, gambling and casino-style gaming has been highly susceptible to corrupt and dishonest operators and patrons. The fast-paced, cash intensive nature of casinos has often proven to attract those who would violate the rules and the law in order to realize a quick payout. Fortunately, the gaming industry, along with Federal and local law enforcement, has over the past several decades developed fervent policies and procedures to prevent cheating and fraud. IGRA envisions and enables the Commission to utilize these proven techniques to maintain the integrity of gaming as it has expanded to Indian lands.

Objective 1.1: Effectively monitor and enforce Indian gaming laws and regulations.

Monitoring and enforcing gaming laws and regulations is an essential function of the Commission. The Commission also works with other Federal agencies to ensure the integrity of the Indian gaming industry. In the past, tribes and their members have been subjected to public corruption investigations, prosecutions and fines for a variety of gaming-related offenses including (but not limited to):

- misappropriation of Indian gaming revenues, or unlawful receipt of funds from gaming contractors;
- internal theft or embezzlement of funds in Indian gaming operations; and
- tax-related violations for not reporting gambling winnings, and for non-compliance with the Title 31 money laundering statutes.

In addition, tribes have been subjected to numerous findings and enforcement actions by the Commission including:

- operational compliance audits that have resulted in hundreds of findings of non-compliance with required minimum internal control standards relative to cash handling and revenue accountability; and
- the issuance of numerous notices of violations, facility closure orders, and the imposition of substantial monetary fines totaling millions of dollars.

These findings and enforcement actions directly affect the profitability of the Indian gaming operation, and in relation to our mission, the integrity of the Indian gaming industry.

Means and Strategies for Achieving Objective 1.1

The Commission will utilize three strategies in order to effectively monitor and enforce gaming laws and regulations.

First, the Commission will ensure that tribes meet the statutory prerequisites to conduct gaming under IGRA by making timely determinations on tribal gaming ordinances, management contracts, and other statutorily-required activities.

Second, the Commission will conduct monitoring activities of Indian gaming operations in a uniform and consistent manner. Routine site visits will consist of compliance reviews and the use of standardized audit checklists. The Commission will, through its various field offices, develop and maintain positive working relationships with tribal gaming regulatory authorities. The Commission will also publish annual compliance reports and annual Indian gaming revenue reports.

Third, the Commission will conduct prudent regulatory enforcement actions as necessary. Working with tribal gaming regulatory authorities, we will provide advice and assistance,

Written Remarks of NIGC Chairman Montie R. Deer
Before the Senate Committee on Indian Affairs
March 14, 2002

Mr. Chairman, Mr. Vice Chairman and members of the Committee. Thank you for this opportunity to report to you on the work of the National Indian Gaming Commission. As you are no doubt aware, the other Commission members and I are approaching the end of our terms, and we would like to say that we appreciate the interest and support that the Commission has received from this Committee during our tenures.

My remarks can be summarized by saying simply that the tremendous growth in the Indian gaming industry, particularly in light of the recent, dynamic changes in California, have strained our ability to keep pace.

In 1988, when the Commission was created, Indian gaming was Indian bingo. Today, it is a major industry producing revenues on par with Nevada and New Jersey combined. While the Indian gaming industry has increased more that one hundred fold, the Commission in vast contrast, has barely doubled from its start-up capacity. It is becoming increasingly difficult for the Commission effectively to carry out its requisite functions under the Indian Gaming Regulatory Act, a situation that is both frustrating and potentially damaging to the industry as a whole. A solid, effective Commission is an important ingredient in the health of this industry.

To put the Commission's resource needs in proper perspective, Mr. Chairman, please note that there are more than 300 tribal gaming facilities in operation today. These facilities are located throughout our great country, from Eastern Connecticut to Southern California, and from South Florida all the way to Washington State. They vary tremendously in size and sophistication, from tiny bingo halls to some of the largest casino operations in the world. To provide proper oversight, the Commission must not only retain a top-notch professional workforce, but we must also equip them with the tools they need to do their job. Given the size and scope of the industry, we are finding it more and more challenging to meet these important obligations.

We come to the Committee today seeking a $2 million appropriation for FY 2003. To be completely candid, we view this request as an interim measure while we work with the Congress and the Indian gaming industry to secure legislation needed to allow flexibility in our fee collection structure. The Administration supports this one-time budget request and our goal of statutory adjustments to the current limitations on our permanent financing.

The upcoming fiscal year marks the fifth consecutive funding cycle during which the Commission has operated under a flat budget. As the Committee will recall, the Indian Gaming Regulatory Act (IGRA) was amended in 1997 to increase the Commission's fee assessment authority to the present level of $8 million. It was recognized that the significant growth in the Indian gaming industry necessitated increased capacity on the part of the Commission.

Since the 1997 increase, the industry has continued to grow. The industry now generates approximately $11 billion per year – an increase of nearly fifty percent since our last adjustment. Despite this rapid growth, the Commission continues to operate under a cap designed for an industry much smaller than the present size.

As previously reported to this Committee, we again emphasize that the Indian gaming boom in California Continues to place a severe strain on our resources. Prior to passage of Proposition 1A in March 2000, there were 39 tribal gaming operations in California. Today, there are 46. In addition to the new facilities, it is important to note that many of those original 39 operations have undergone significant expansion, further impacting our workload. This growth is sure to continue. The number of California tribes having compacts for class III gaming could ultimately reach as high as 70.

The nature of gaming in California has changed as well, as major commercial players, such as Harrah's Entertainment, Anchor Gaming, Stations Casinos, and Donald Trump, have submitted management contracts to the Commission. While the contract review process gives us the opportunity to ensure the goals of Congress for such arrangements can be met, this also means that Commission staff must conduct complex financial background investigations, review the many documents related to the contractual relationship, and evaluate the environmental impacts of the casino development. To do our job in a timely manner we have had to hire temporary employees and retain consultants, to conduct background investigations, to provide financial analysis of the contracts, and to develop necessary environmental assessments.

A regrettable casualty of our flat budget has been our regular government-to-government consultations with tribal officials. Until the realities of our limited resources forced us to stop, the Commission had been conducting quarterly consultations with tribes. These one-on-one sessions were held at our regional offices and provided an opportunity for tribal leaders and the Commissioners to meet and discuss matters of mutual interest or concern. We also used the occasion to provide training on wide array of topics, including internal control standards and ethical issues. These consultations not only resulted in better, more productive relations with tribal governments, but also helped keep enforcement costs in check.

Among our most important activities as an agency is rulemaking, and we have worked hard to carry out our activities in this arena in keeping with the highest principles of the federal-tribal relationship. The primary rulemaking activities initiated by this Commission have been undertaken through an advisory committee process, followed by formal hearing to secure the fullest level of input. But the many benefits derived from this method of rulemaking come with a price, in that they are more expensive than simply writing the rules and receiving written comment.

In our effort to manage costs, we have also had to reduce travel across-the-board and we have instituted a hiring freeze. The commission is solvent, but it is solvent because we have allowed vacant positions to remain unfilled and because we have

reduced our presence in Indian country. We are certain that this is not what Congress had in mind when it created the Commission.

When we produced our Biennial Report for the years 1999-2000, we estimated our 2001 work force at seventy-seven employees. In fact today we employ sixty-eight people, two of whom are temporary employees, because we are concerned about the sustainability of staffing beyond this level. By "sustainability" we mean more than simply covering the cost of salaries and benefits, but also equipping the staff and getting them to where they need to be. The oversight responsibilities of the commission require professional employees – field investigators, auditors and lawyers – and we don not have enough. But we do not have the money to hire more of these employees and fund the travel, overhead, and other operational expenses associated with a larger staff.

By way of illustration, let's look at our Audit Division and the Minimum Internal control Standards (MICS), which became effective February 2000. We began FY 2002 with six (6) auditors. Through attrition, we have lost two. These positions, though critical have not been filled due to our need to impose a hiring freeze and a shortage of funds to allow auditors to travel.

Due to its cash intensive nature, gaming is an exceedingly vulnerable industry. And in contrast to an industry in which all transactions are documented by cash register receipts, gaming operations have hundreds or thousands operations each day that cannot be supported by such documentation. The lack of supporting documentation for bets and other transactions makes the industry especially vulnerable. To protect the assets of the operation under these circumstances, observers must carefully monitor the wagering activities. This makes the industry highly labor intensive.

During the early 80's, the Nevada Gaming Control Board recognized that pre-established procedures or "internal controls" were essential to identify and deter irregularities effectively. In 1985, Nevada promulgated a framework of minimum internal control standards deemed necessary to ensure the proper recognition of gaming revenues and to safeguard the interests of the gaming public. Other jurisdictions soon followed Nevada's lead. Inherent in an internal control structure are the concepts of individual accountability and segregation of incompatible functions. The existence of standards alone, however, is not enough. Any internal control system carries the risk of circumvention, which is why a process of independent oversight is so critical to the integrity of an operation.

Consistent with our peers, the Commission promulgated its own minimum internal control standards (MICS). Recognizing the complexity of this aspect of our oversight responsibility, the Audit Division has been staffed by accountants experienced in the performance of gaming compliance audits. Without regard to the venue in which the gaming is conducted, history had demonstrated that, left unregulated, gaming will fall victim to those intent on preying upon its vulnerabilities. Consequently, the Commission has profound appreciation for the need to measure and evaluate compliance with the MICS.

One way to view the MICS is as a protective shield against threats to tribal gaming integrity. With an appropriate level of sampling, we believe we can measure compliance with the MICS and make a meaningful contribution to ensuring the overall integrity of Indian gaming. Unfortunately, at current staffing levels, it would take twenty to thirty years for the Commission to evaluate each of the existing gaming operations.

There are other needs as well. The Commission would like to complete several projects that will pay future dividends in terms of overall efficiency and effectiveness. We are in the final stages of our technology initiative and are ready to begin implementing the financial and records management components of our new database. We are also preparing to introduce an electronic accounts receivable capability that will provide a database interface for on-line payments of fees. We have plans to improve our public information system by introducing dedicated FOIA software.

We are in the final phases of a project to improve the speed with which we provide fingerprint results from the FBI to the tribes. In the nine years we have been handling fingerprints for the tribes, we have processed more than 145,000 sets. Last year, with support from the FBI, we established a high-speed direct connection. Once our hardware needs are fully met, we will be able to take full advantage of this connection, and reduce the time it takes to process criminal background information for tribal employees from weeks or months to days or hours, a tremendous benefit to gaming tribes.

As mentioned at the beginning, my term at the Commission is drawing to a close, as are the terms of the other Commissioners. Our successors will face some significant challenges, and we hope that my remarks today will help pave the way as they guide the Commission in the next three years. Thank you for your kind attention. Let me say for myself, Vice Chair Homer and Commissioner Poust, that we each appreciate the support and many courtesies that you have extended us.

Thank you. We would be happy to answer any questions that the Committee may have.

Exhibit E

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More California news

Past could hurt state regulation of casinos

New deals worth billions to 5 tribes

By James P. Sweeney
COPLEY NEWS SERVICE

May 28, 2007

SACRAMENTO – To the surprise of many, the Schwarzenegger administration and the chairman of California's gambling commission recently declared that the state has all the legal authority it needs to step in and restore basic operating standards for Indian casinos.

The stance offered a fresh counterargument to Assembly Democrats who say pending gambling agreements for five big Southern California tribes must be reopened to address the loss of federal guidelines tossed out by a federal court.

The new gambling agreements, or compacts, are worth billions of dollars to the five tribes, which include Sycuan of El Cajon and Pechanga of Temecula. The state would receive a sizable cut, projected at more than $22 billion over the 23-year life of the deals.

But echoes from the past, when an angry debate over the state's regulatory reach all but consumed the gambling commission, could undercut the administration's recent assertion and blunt any impact it might have on the stalled compacts.

It wasn't that long ago that most if not all of the five tribes with the pending deals insisted that the state had little power to regulate casinos in the first round of compacts signed in 1999.

"Under the compact, the California Gambling Control Commission has no direct role or authority in regulating tribal government gaming," Sycuan argued in a January 2003 letter to the commission.

Morongo, another tribe with a compact pending, made the same claim in a largely identical letter at the time.

Agua Caliente Chairman Richard Milanovich, whose tribe also has one of the pending deals, complained earlier that the commission was "overstepping its bounds" in the pursuit of uniform tribal gaming regulations and additional auditors.

Sen. Jim Battin, a Palm Desert Republican aligned with tribes, noted in a memo in June 2001 that tribal leaders believed the gambling commission was "attempting to over-assert its regulatory authority into tribal activities in which they have no jurisdiction."

At the time, the fledgling commission and its critics were sorting through murky compact language that clearly gave tribes the primary role in regulating and governing their casinos but left the state's position open to interpretation.

The National Indian Gaming Commission had just finished work on a comprehensive set of minimum

standards for internal security at casinos, from cash handling to cash and credit operations, internal audits, surveillance and the games, whose standards included things from technical requirements to how often decks of cards should be changed.

The federal rules prevailed until late last year, when a federal appeals court upheld an earlier ruling that the national commission did not have the authority to establish and enforce such standards in most Indian casinos: those that offer conventional slot machines and other Nevada-style games.

The courts said the issue of operating rules should be resolved in the compacts.

The legal setback could "greatly impact California," Gov. Arnold Schwarzenegger warned in a March 30 letter to the Senate Committee on Indian Affairs. He urged Congress to restore the federal rules.

The administration also has supported a move by the state gambling commission and some tribes with pending compacts to develop a statewide regulation to require casino standards at least as stringent as the federal rules.

However, the proposal has drawn a cool response from many of California's more than 60 gaming tribes.

With the five big compacts stymied in the Assembly, attorneys for the governor and the commission – which is appointed by the governor – told an Assembly committee this month that the state could fill any regulatory void under the 1999 compacts.

"We determined that all of the compacts provide the commission with ample oversight authority and access related to tribal (internal standards)," Commission Chairman Dean Shelton told the Governmental Organization Committee. "This includes the authority to review tribes' gaming facilities and inspect related gaming operations or . . . records."

The commission simply lacked the staff and resources to exercise its power in the past, Shelton said.

Under questioning, Shelton said the commission could adopt and enforce the proposed statewide regulation on internal standards even if most tribes reject it.

"This is unprecedented," said Howard Dickstein, a leading tribal attorney. "No one from the state has ever taken this position before."

Assemblyman Alberto Torrico, a Fremont Democrat who is chairman of the committee, also wasn't convinced. Just last year, the commission had lamented the state's "limited compact authority" in its request for a budget increase, Torrico noted.

He asked why the governor appealed to Congress for help if the administration really believes the state has all the legal tools it needs to watch over Indian casinos.

"Either we're serious about coming up with a statewide solution or . . . we're going to admit here publicly we don't care, there is no federal regulation, we have these compacts pending," Torrico said. "Let the chips fall where they may."

Tribes did not testify, but representatives of some with pending compacts applauded the administration.

"There is a lot of concern about things we believe are already in place," said Nancy Conrad, a spokeswoman for Agua Caliente. "We believe the regulatory oversight is there."

George Forman, a prominent tribal attorney who represents both Sycuan and Morongo, said that despite widespread criticism of the 1999 compact, "The state did not leave itself defenseless and paralyzed."

He said the state has the ability under the compact "to ensure that tribes adhere to (minimum standards) consistent with those mandated by the National Indian Gaming Commission."

Earlier protests about the commission's regulatory reach have to be measured within the context of the debate at the time, he said.

"They were very different issues getting into very different areas that were, and in most cases remain, not appropriate for state gambling commission intervention," Forman said.

Others still aren't so sure.

I. Nelson Rose, a Whittier Law School professor who specializes in gambling law, said the state lacks clear authority to conduct broad audits of tribal casinos. He also recalled tribes' efforts to squeeze the gambling commission's early budgets.

"You can't regulate if your budget is dependent on the whims of politicians who are subject to political pressure from the tribes," he said.

Find this article at:
http://www.signonsandiego.com/news/state/20070528-9999-1n28casinos.html

☐ Check the box to include the list of links referenced in the article.

Exhibit F

GOVERNOR ARNOLD SCHWARZENEGGER

March 30, 2007

The Honorable Byron Dorgan
Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

The Honorable Craig Thomas
Ranking Member
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Re: NIGC Class III Gaming Authority, Minimum Internal Control Standards

Dear Chairman Dorgan and Senator Thomas,

As you are aware, the Court of Appeals for the District of Columbia recently ruled in *Colorado River Indian Tribes v. National Indian Gaming Commission,* that the National Indian Gaming Commission does not have authority to enforce Minimum Internal Control Standards (MICS) for class III gaming. This ruling has the potential to greatly impact California, and I would support federal legislation that would confirm the NIGC's authority to establish and enforce the MICS for class III gaming.

California has over 100 federally-recognized Indian tribes. Currently, 66 of those tribes have tribal-state gaming compacts. There are 56 tribal casinos in operation in California and several more in the planning and development stage. Our gaming compacts require tribes to adopt and comply with rules and regulations governing various internal control areas and to provide for significant state regulatory oversight. Our approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate, NIGC's activities. This has worked well for California. I believe that strong state, federal and tribal regulation and oversight of class III gaming best serves the public interest and furthers the goals of the Indian Gaming Regulatory Act.

I encourage and support efforts at the federal level to confirm and clarify the NIGC's authority.

Sincerely,

Arnold Schwarzenegger

cc: The Honorable Dianne Feinstein